

HON'BLE MR. JUSTICE BILAL NAZKI
AND
HON'BLE MR. JUSTICE D.APPA RAO

WP.NO. 7391 OF 2005

-

Dt. 18.3.2006

Between:

The Federation of All India Tea Traders' Associations and another

...Petitioners

and

The Government of Andhra Pradesh and others

...Respondents.

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE D.APPA RAO

WP.NO. 7391 OF 2005

-
JUDGMENT: (Per Hon'ble Mr. Justice Bilal Nazki)

The petitioners contend that they represent All India Tea Traders and Tea Manufacturers. They submit that in order to bring uniformity in the country with regard to taxation on sales, the value added tax was introduced and it was also introduced in the State of Andhra Pradesh. Under the new dispensation there are only two rates of taxation i.e., 4% and 12.5%. The items that are attracting higher rate of taxation include tea and coffee. Under this new dispensation, all the dealers who have a turnover limit upto Rs.40 lakhs have to pay 1% turn over tax on quarterly basis, while dealers with more than Rs.40 lakhs turnover are to be registered as VAT dealers. It is submitted that an empowered committee of State Finance Ministers was set up in the year 2000 under the Chairmanship of West Bengal Finance Minister Dr. Asim Dasgupta and it held 89 meetings for arriving at consensus and some states have accepted the recommendations of the Empowered Committee. The petitioners, on 18.11.2004, submitted a representation by way of memorandum to the Finance Minister, Union of India requesting that the VAT on Tea @ 12.5% be reduced at 4% as it was unreasonable and has the effect of destroying the tea trade. They also brought to the notice of the Finance Minister that the Empowered Committee had recommended that all goods of mass consumption and agricultural products should be taxed at 4% and not at 12.5%. The petitioners referred to various reports of committees like Tandon, Kelkar set up by the Central Government which recommended that the tax on tea be reduced to the lowest level. It is also stated that in most of the States particularly the neighbouring States i.e., Karnataka and Tamil Nadu the tax on tea was only at 4%. It is further submitted that the Chief Minister of Andhra Pradesh, on 31.3.2005, had assured that the Government will consider the suggestions after getting feedback and implementing the VAT for three months.

In view of these facts, Mr. S. Ramchandra Rao, learned senior counsel appearing for the petitioners contends that the inclusion of common food stuff, which is an agricultural product and which is exempt from the excise duty and service charge in V schedule and taxing it at 12.5% was unreasonable. He also submits that Tamil Nadu, Kerala and Karnataka are charging only 4%. He also contends that the power was exercised arbitrarily and therefore this Court should issue writ of mandamus declaring that the inclusion of tea in Schedule V of the A.P. Value Added Tax Act, 2005 and tax it @ 12.5% under sub-section (3) of Section 4 of the A. P. Value Added Tax Act, 2005 as illegal, arbitrary and in violation of Articles 14 and 19 (1) (g) of the Constitution of India. The petitioners also asked this Court to give a direction that the tea should be placed in Schedule IV and charged tax @ 4%.

The 2nd respondent in his counter affidavit contends that it is the wisdom of the legislature that has placed different commodities under different schedules. There are two schedules to the VAT, items falling in one of the schedules carry a tax of 4% and items falling in another schedule attract 12.5% tax and this is not within the purview of the Court to fix a rate of tax for a particular commodity.

The learned senior counsel appearing for the petitioners has placed reliance on number of judgments to canvass a point that this Court can issue the writ as prayed for.

In *M/s. Weston Electroniks Vs. State of Maharashtra* the Supreme Court lays down that the rate of tax for the same item cannot be different. Obviously this judgment has no application to the facts on hand. He has also referred to judgments of the Supreme Court reported in *K.T. Moopil Nair Vs. State of Kerala*, *Ayurveda Pharmacy Vs. State of Tamil Nadu*, *State of Madras Vs. Nandlal & Co.*. There is no quarrel with the principles laid down in these judgments that the constitution limits on taxing power should not deny equal protection of laws, but there is no factual basis on which these judgments could be applied to issue the writ as prayed for. The

learned senior counsel has also argued that there is no basis for classification and therefore the same is unsustainable and the same class of property should be subjected to same value of taxation. In this connection he has relied on a judgment of the Supreme Court reported in *I.T. Officer, Assam Vs. Lawrence Singh*. It is also stated by the learned senior counsel that levying of tax at 12.5% was unreasonable and violative of Article 14 of the Constitution of India. He has also contended that the empowered committee had recommended 4%, but the State had imposed tax @ 12.5%. In our view, this would hardly make a difference because the committee does not have any legislature power and its recommendations cannot govern the legislature. However, the learned Standing Counsel for Commercial Taxes appearing for the respondents submits that this is not correct, as the empowered committee had recommended tax at 12.5%. He has drawn our attention to a letter which reads as under,

“Some states have raised a question about the rate of VAT on a few commodities like tea.

You would recall that the EC had decided that items that are to be taxed @ 4% on the recommendations of EC can be taxed at a higher rate by the states if they so desire. Our initial decision was to tax tea @ 12.5%. However, keeping in view the problems being faced by tea industry and tea growing states, states were given the option of taxing tea @ 4%. However, this option is only for the 1st year and the position would be reviewed by the EC at the end of 1st year.

To reiterate the position is that recommended rate for tea remains at 12.5% but states have the option of taxing it at 4% for the year 2005-06.”

The learned Standing Counsel submits that fixing of rate of tax on the items that are to be taxed is purely in the domain of legislature and it will not be possible for this Court to give a direction that tea should be taxed at 4% and not at 12.5% in view of the law laid down by the Apex Court. The question that is essentially to be decided in

this writ petition is whether a direction for changing the rate of tax on tea can be given by this Court. In a judgment of the Supreme Court reported in *Cooch Behar Contractors' Association Vs. State of W.B.* the question was more complex and it was whether it was permissible for State legislature to levy tax on deemed sales by prescribing a uniform rate of tax for all goods involved in the execution of a works contract even though different rates of tax were prescribed for sale of such goods when sold independently or separately. The argument made before the Court was that it would not be permissible to impose two different rates of tax in respect of sale of the same article, one rate when the article is sold separately and a different rate when there is deemed sale in connection with the execution of a works contract. This argument was countered by submitting that it was permissible for the State to impose a particular rate of tax on all goods involved in the execution of a works contract which may be different from the rates of tax applicable to those goods when sold separately. The Supreme Court held that in the field of taxation the decisions of this Court have permitted the legislature to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes. Then a reference was given by the Supreme Court to various judgments and accepted the views in those judgments. The Supreme Court, in this case, further held,

“In our opinion, therefore, it would be permissible for the State Legislature to tax all the goods involved in the execution of a works contract at a uniform rate which may be different from the rates applicable to individual goods because the goods which are involved in the execution of the works contract when incorporated in the works can be classified into a separate category for the purpose of imposing the tax and a uniform rate may be prescribed for sale of such goods.”

The Supreme Court further held that there is no discrimination violating the Article 14 of the Constitution of India.

By this judgment, it is imperative that the rates at which the goods are to be taxed and the goods which are to be taxed is a

matter which is in the domain of the legislature and the goods are identified and the rates are fixed keeping in mind the existing tax structure, revenue structure and consumers' requirements. Therefore what the petitioners want this Court is obviously not in the domain of the Court particularly in view of the fact that hostile discrimination is not even pleaded.

For these reasons, we feel that the writ petition is misconceived and is dismissed. No costs.

BILAL NAZKI J.

D.APPA RAO J.

Dt. 18.3.2006

KR

